

2020 No. 1

POLICE, ENGLAND AND WALES

The Police Appeals Tribunals Rules 2020

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CONTENTS

1. Citation and commencement
2. Revocations and transitional provisions
3. Interpretation and general provision as to written notices or documents
4. Circumstances in which a police officer may appeal to a tribunal – Conduct Regulations
5. Circumstances in which a police officer may appeal to a tribunal – Performance Regulations
6. Circumstances in which a former police officer may appeal to a tribunal
7. Delegation of functions
8. “The relevant person” for the purposes of paragraphs 1 and 2 of Schedule 6 to the 1996 Act
9. Notice of appeal
10. Notice of appeal out of time
11. The respondent
12. Presenting of case by Director General
13. Procedure on notice of appeal
14. Extensions of time limits
15. Review of appeal
16. Determination of an appeal
17. Power to request disclosure of documents
18. Notice of the hearing
19. Legal and other representation
20. Procedure and oral evidence at hearing
21. Statements in lieu of oral evidence
22. Attendance at hearing
23. Attendance of complainant and interested person at hearing
24. Attendance of Director General at hearing
25. Exclusion from hearing
26. Statement of tribunal’s determination
27. Amendment of the Police Barred List and Police Advisory List Regulations 2017

The Secretary of State, in exercise of the powers conferred by sections 85(1) and (3) to (4A) and 88G(4) and (5)(b) of, and paragraph 2A of Schedule 6 to, the Police Act 1996(a), makes the following Rules.

In accordance with section 63(3)(a) of the Police Act 1996(b), the Secretary of State has supplied a draft of these Rules to the Police Advisory Board for England and Wales and has taken into consideration the representations made by that Board before making these Rules.

Citation and commencement

1. These Rules may be cited as the Police Appeals Tribunals Rules 2020 and come into force on 1st February 2020.

Revocations and transitional provisions

2.—(1) Subject to paragraph (2), the following are revoked—

- (a) the Police Appeals Tribunals Rules 2012 (“the 2012 Rules”)(c);
- (b) the Police Appeals Tribunals (Amendment) Rules 2015(d), and
- (c) regulation 1 (so far as it applies to the 2012 Rules) and Part 3 of the Police (Conduct, Complaints and Misconduct and Appeal Tribunal) (Amendment) Regulations 2017(e).

(2) The Rules and provisions mentioned in paragraph (1) and regulation 11(2) of the Police Barred List and Police Advisory List Regulations 2017(f) as in force immediately before these Rules come into force continue to have effect in relation to an appeal under section 85 of the 1996 Act against a decision made in accordance with—

- (a) the Police (Performance) Regulations 2008(g);
- (b) the Police (Conduct) Regulations 2008(h);
- (c) the Police (Performance) Regulations 2012(i), or
- (d) the Police (Conduct) Regulations 2012(j).

Interpretation and general provision as to written notices or documents

3.—(1) In these Rules—

“the Complaints and Misconduct Regulations” means the Police (Complaints and Misconduct) Regulations 2020(k);

“the Conduct Regulations” means the Police (Conduct) Regulations 2020(l);

“the Performance Regulations” means the Police (Performance) Regulations 2020(m);

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- (a) 1996 c. 16. Section 85 was substituted by paragraphs 1 and 8 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c. 4) and amended by section 29(1) and (5) of the Policing and Crime Act 2017 (c. 3) (“the 2017 Act”). Paragraph 2A of Schedule 6 was inserted by section 31 of the 2017 Act. Section 88G was inserted by Schedule 8 to the 2017 Act.
 - (b) Section 63(3)(a) was substituted by paragraph 6(2) of Schedule 22 to the Criminal Justice and Immigration Act 2008. There are further amendments to section 63, but none are relevant.
 - (c) S.I. 2012/2630, amended by S.I. 2015/625, 2017/1134 and 2017/1250.
 - (d) S.I. 2015/625.
 - (e) S.I. 2017/1134.
 - (f) S.I. 2017/1135.
 - (g) S.I. 2008/2862, revoked subject to transitional provisions by regulation 3 of S.I. 2012/2631.
 - (h) S.I. 2008/2864, revoked subject to transitional provisions by regulation 2 of S.I. 2012/2632.
 - (i) S.I. 2012/2631, amended by S.I. 2014/2403, 2017/1134 and 2017/1250 and revoked, subject to transitional provisions, by regulation 3 of S.I. 2020/3.
 - (j) S.I. 2012/2632, amended by S.I. 2014/3347, 2015/626 and 2017/1134 and revoked, subject to transitional provisions, by regulation 3 of S.I. 2020/4.
 - (k) S.I. 2020/2.
 - (l) S.I. 2020/4.
 - (m) S.I. 2020/3.

“appellant” means a police officer or a former police officer who has given a notice of appeal in accordance with rule 9 or 10;

“chair” means—

- (a) for the purposes of rules 10, 13, 14 and 15, a chairman appointed under Schedule 6 to the 1996 Act(a), and
- (b) for the purposes of rules 16 to 18 and 23 to 26, the chairman of the tribunal;

“disciplinary action”—

- (a) in relation to a police officer, means disciplinary action under the Conduct Regulations;
- (b) in relation to a former police officer, means a finding that the former officer would have been dismissed if the former officer had not ceased to be a member of a police force or a special constable;

“original hearing” means—

- (a) the misconduct hearing or accelerated misconduct hearing under the Conduct Regulations, or
- (b) the third stage meeting under the Performance Regulations, at or following which the relevant decision was made;

“relevant decision” means the finding or decision as to the disciplinary action or outcome which may be appealed or is being appealed to a tribunal in accordance with rule 4, 5 or 6;

“relevant local policing body” means the local policing body(b) for—

- (a) the police force of which a police officer who wishes to appeal to a tribunal, or the appellant (where the appellant is a police officer), is a member;
- (b) the police force for the police area for which—
 - (i) a police officer who wishes to appeal to a tribunal, or
 - (ii) the appellant (where the appellant is a police officer), is appointed as a special constable;
- (c) the police force of which a former police officer who wishes to appeal to a tribunal, or the appellant (where the appellant is a former police officer), was a member at the relevant time, or
- (d) the police force for the police area for which a former police officer who wishes to appeal to a tribunal, or the appellant (where the appellant is a former police officer), was appointed as a special constable at the relevant time;

“relevant person”, except in rule 8, means—

- (a) the relevant local policing body, or
- (b) where the relevant local policing body has delegated functions in relation to the administration of the appeal under rule 7 to another local policing body, that other body;

“relevant police force” means—

- (a) the police force of which the appellant is a member;
- (b) where the appellant is a special constable, the police force for the police area for which the appellant is appointed;
- (c) where the appellant was a member of a police force at the relevant time, the police force of which the appellant was a member, or
- (d) where the appellant was a special constable at the relevant time, the police force for the police area for which the appellant was appointed;

(a) Schedule 6 to the Police Act 1996 was amended by paragraph 107(2) of Schedule 27 to the Greater London Authority Act 1999 (c. 29), section 125(5) of the Criminal Justice and Police Act 2001 (c. 16), sections 29(6), 31 and 41(4) of the Policing and Crime Act 2017 and by regulation 8(2)(c) of S.I. 2018/226.

(b) See section 101(1) of the Police Act 1996 for the definition of local policing body.

“relevant time” means, in relation to a former police officer, the time immediately before the former officer ceased to be such an officer;

“specified appeal” means an appeal where the relevant decision arose from a case where—

- (a) paragraph 16 of Schedule 3 to the 2002 Act (investigations by the appropriate authority on its own behalf)(a) applied and—
 - (i) the Director General—
 - (aa) made a recommendation under paragraph 25(4C)(c) of that Schedule (reviews with respect to an investigation)(b) which the appropriate authority accepted;
 - (bb) made a recommendation under paragraph 27(3A) of that Schedule (recommendation of Director General to appropriate authority)(c) in relation to the unsatisfactory performance of a police officer, or
 - (cc) gave a direction under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings), or
 - (ii) a local policing body made a recommendation under paragraph 25(4E)(c) of that Schedule (reviews with respect to an investigation) which the appropriate authority accepted, or
- (b) paragraph 18 or 19 of Schedule 3 to the 2002 Act (directed and independent investigations)(d) applied;

“tribunal” means—

- (a) for the purposes of rules 4 to 6, 9 and 10, a police appeals tribunal appointed under Schedule 6 to the 1996 Act, and
- (b) for the purposes of rules 20 to 22 and 26, in relation to an appeal, the police appeals tribunal appointed under Schedule 6 to the 1996 Act to determine that appeal.

(2) In these Rules, any expression which is also used in the Conduct Regulations or the Performance Regulations, unless that expression is given a different meaning in paragraph (1), has the same meaning as in those Regulations.

(3) Where any written notice or document is to be given or supplied to the appellant under these Rules, it must be—

- (a) given to the appellant in person;
- (b) left with a person at, or sent by recorded delivery to, the appellant’s last known address, or
- (c) given to the appellant in any other manner agreed between the person who is required to give the notice or document and the appellant.

Circumstances in which a police officer may appeal to a tribunal – Conduct Regulations

4.—(1) Subject to paragraph (3), a police officer to whom paragraph (2) applies may appeal to a tribunal in reliance on one or more of the grounds of appeal referred to in paragraph (4) against one or both of the following—

- (a) a finding referred to in paragraph (2)(a), (b) or (c) made under the Conduct Regulations;

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- (a) Paragraph 16 was amended by paragraphs 11 and 14 of Schedule 12 to the Serious Organised Crime and Police Act 2005, paragraphs 1, 11 and 12 of Schedule 14 to the Police Reform and Social Responsibility Act 2011 (c. 14), paragraphs 8 and 17 of Schedule 6 to the Crime and Courts Act 2013 (c. 22) and paragraphs 9 and 16 of Schedule 5 to the Policing and Crime Act 2017. There are further amendments to paragraphs 18 and 19, but none are relevant.
 - (b) Paragraph 25(4A) to (4J) was inserted by paragraphs 29 and 34(1) and (5) of Schedule 5 to the Policing and Crime Act 2017.
 - (c) Paragraph 27(3A) was inserted by section 138(2) and (4) of the 2014 Act and amended by paragraph 56(2) of Schedule 9 to the 2017 Act.
 - (d) Paragraph 18 was amended by paragraphs 1, 11 and 16 of Schedule 12 to the Serious Organised Crime and Police Act 2005 (c. 15), and by paragraphs 9, 15, 18 and 19 of Schedule 5 to the Policing and Crime Act 2017; paragraph 19 was amended by paragraphs 1, 11 and 17 of Schedule 12 to the Serious Organised Crime and Police Act 2005 and paragraphs 9, 15, 20 and 56 of Schedule 9 to the Policing and Crime Act 2017. There are further amendments to paragraphs 18 and 19, but none are relevant.

- (b) any decision to impose disciplinary action under the Conduct Regulations in consequence of that finding.
- (2) This paragraph applies to—
- (a) an officer other than a senior officer against whom a finding of misconduct or gross misconduct has been made at a misconduct hearing;
 - (b) a senior officer against whom a finding of misconduct or gross misconduct has been made at a misconduct meeting or a misconduct hearing, or
 - (c) an officer against whom a finding of gross misconduct has been made at an accelerated misconduct hearing.
- (3) A police officer may not appeal to a tribunal against a finding referred to in paragraph (2)(a), (b) or (c) where that finding was made following acceptance by the officer that the officer's conduct amounted to misconduct or gross misconduct (as the case may be).
- (4) The grounds of appeal under this rule are—
- (a) that the finding or decision to impose disciplinary action was unreasonable;
 - (b) that there is evidence that could not reasonably have been considered at the original hearing which could have materially affected the finding or decision on disciplinary action, or
 - (c) that there was a breach of the procedures set out in the Conduct Regulations, the Complaints and Misconduct Regulations or Part 2 of the 2002 Act or unfairness which could have materially affected the finding or decision on disciplinary action.

Circumstances in which a police officer may appeal to a tribunal – Performance Regulations

5.—(1) Subject to paragraph (3), a police officer to whom paragraph (2) applies may appeal to a tribunal in reliance on one or more of the grounds of appeal referred to in paragraph (6) against one or both of the following—

- (a) a finding referred to in paragraph (2) made under the Performance Regulations;
- (b) an outcome which is imposed under the Performance Regulations in consequence of that finding and mentioned in paragraph (4) or (5).

(2) This paragraph applies to a police officer against whom a finding of unsatisfactory performance or attendance or gross incompetence has been made at a third stage meeting.

(3) A police officer may not appeal to a tribunal against a finding referred to in paragraph (2) where that finding was made following acceptance by the officer that the officer's performance or attendance has been unsatisfactory or that the officer has been grossly incompetent (as the case may be).

(4) Where there has been a finding of unsatisfactory performance or attendance following a third stage meeting which the police officer was required to attend under regulation 30 of the Performance Regulations, the officer may appeal against the following outcomes—

- (a) dismissal with notice;
- (b) reduction in rank;
- (c) redeployment to alternative duties.

(5) Where there has been a finding of gross incompetence or unsatisfactory performance following a third stage meeting which the police officer was required to attend under regulation 32 of the Performance Regulations, the officer may appeal against the following outcomes—

- (a) dismissal without notice;
- (b) reduction in rank;
- (c) redeployment to alternative duties;
- (d) the issue of a final written improvement notice;
- (e) the issue of a written improvement notice.

- (6) The grounds of appeal under this rule are—
- (a) that the finding or outcome imposed was unreasonable;
 - (b) that there is evidence that could not reasonably have been considered at the original meeting which could have materially affected the finding or decision on the outcome;
 - (c) that there was a breach of the procedures set out in the Performance Regulations, the Complaints and Misconduct Regulations or Part 2 of the 2002 Act or unfairness which could have materially affected the finding or decision on the outcome, or
 - (d) that, where the police officer was required to attend the third stage meeting under regulation 30 of the Performance Regulations, the officer should not have been required to attend that meeting as it did not, in accordance with regulation 30(6) or 48(10) of those Regulations, concern unsatisfactory performance or attendance similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice.

Circumstances in which a former police officer may appeal to a tribunal

6.—(1) Subject to paragraph (3), a former police officer to whom paragraph (2) applies may appeal to a tribunal in reliance on one or more of the grounds of appeal referred to in paragraph (4) against one or both of the following—

- (a) a finding referred to in paragraph (2)(a) or (b) made under the Conduct Regulations;
- (b) any decision to impose disciplinary action under the Conduct Regulations in consequence of that finding.

(2) This paragraph applies to—

- (a) a former police officer against whom a finding of misconduct or gross misconduct has been made at a misconduct hearing, and
- (b) a former police officer against whom a finding of gross misconduct has been made at an accelerated misconduct hearing.

(3) A former police officer may not appeal to a tribunal against a finding referred to in paragraph (2)(a) or (b) where that finding was made following acceptance by the former officer that the officer's conduct amounted to misconduct or gross misconduct (as the case may be).

(4) The grounds of appeal under this rule are—

- (a) that the finding or decision to impose disciplinary action was unreasonable;
- (b) that there is evidence that could not reasonably have been considered at the original hearing which could have materially affected the finding or decision to impose disciplinary action, or
- (c) that there was a breach of the procedures set out in the Conduct Regulations, the Complaints and Misconduct Regulations or Part 2 of the 2002 Act or unfairness which could have materially affected the finding or decision to impose disciplinary action.

Delegation of functions

7. The relevant local policing body may, if it considers it appropriate in a particular case, delegate functions in relation to the administration of an appeal to another local policing body.

The “relevant person” for the purposes of paragraphs 1 and 2 of Schedule 6 to the 1996 Act

8. For the purposes of paragraphs 1 and 2 of Schedule 6 to the 1996 Act (police appeals tribunals)(a), “relevant person” means—

- (a) the local policing body for—

(a) Paragraphs 1 and 2 of Schedule 6 to the Police Act 1996 were amended by section 31 of the Policing and Crime Act 2017.

- (i) the police force of which a police officer who wishes to appeal to a tribunal, or the appellant (where the appellant is a police officer), is a member, or
- (ii) the police force for the police area for which—
 - (aa) a police officer who wishes to appeal to a tribunal, or
 - (bb) the appellant (where the appellant is a police officer), is appointed as a special constable, or
- (b) where the body referred to in paragraph (a) has, under rule 7, delegated functions in relation to the administration of the appeal to another local policing body, that other body.

Notice of appeal

9.—(1) Subject to rule 10, a police officer or a former police officer who wishes to appeal to a tribunal must give notice of the appeal before the end of 10 working days beginning with the first working day after the day on which the officer is first supplied with a written copy of the relevant decision.

(2) The notice of appeal must be given in writing to the relevant local policing body.

(3) The officer or former officer may request a transcript of the proceedings (or part of the proceedings) at the original hearing in the officer's or former officer's notice of appeal.

Notice of appeal out of time

10.—(1) This rule applies where a police officer or a former police officer wishes to give notice of an appeal to a tribunal after the end of the period mentioned in rule 9(1).

(2) A police officer or a former police officer may give notice of the appeal within a reasonable time after the end of that period.

(3) The notice must be accompanied by the reasons why it was not given within that period and the reasons for the officer's view that it has been given within a reasonable time after that period.

(4) Upon receipt—

(a) where functions have been delegated under rule 7, the relevant local policing body must supply a copy of the notice and the reasons to the relevant person, and

(b) in all cases, the relevant person must supply a copy of the notice and the reasons to the chair who must determine—

(i) whether it was reasonably practicable for the notice to be given within the period mentioned in rule 9(1); and

(ii) whether the notice has been given within a reasonable time after the end of that period.

(5) If the chair determines either that it was reasonably practicable for the notice to be given within that period or that the notice has not been given within a reasonable time after the end of such period, the appeal must be dismissed.

(6) Where the appeal is not dismissed under paragraph (5), the appeal must proceed and the chair must give directions for the application of rule 13 to the appeal.

The respondent

11.—(1) Where the appellant is—

(a) a chief officer of police or a former police officer who was a chief officer of police at the relevant time, or

(b) an acting chief officer or a former police officer who was an acting chief officer at the relevant time,

the respondent must be a person designated by the relevant local policing body.

(2) Where the appellant is any other police officer or other former police officer, the respondent must be the chief officer of police of the relevant police force.

Presenting of case by Director General

12.—(1) Where paragraph (2) applies to an appeal, the Director General must present the case for the respondent.

(2) This paragraph applies to an appeal if the Director General presented the case to which the appeal relates at the misconduct hearing or, as the case may be, accelerated misconduct hearing, pursuant to a decision under regulation 24(1) of the Conduct Regulations.

(3) The respondent must give the Director General any assistance the Director General reasonably requires for the purpose of presenting a case.

(4) Where the Director General is presenting the case in accordance with paragraph (1), all references to the respondent in rules 13 (other than paragraph (1)(a)), 14 to 18, 23, 25 and 26 are to be read as if they referred instead to the Director General.

Procedure on notice of appeal

13.—(1) As soon as reasonably practicable, the relevant local policing body must supply a copy of the notice of appeal—

- (a) to the respondent;
- (b) where functions have been delegated under rule 7, to the relevant person, and
- (c) where—
 - (i) the appeal is a specified appeal, or
 - (ii) the Director General is presenting the case, in accordance with rule 12(1), to the Director General.

(2) Where functions have been delegated under rule 7, the relevant local policing body must, as soon as reasonably practicable, give the appellant and the respondent written notice of the delegation, including details of the local policing body to whom the functions have been delegated.

(3) As soon as reasonably practicable after receipt of a copy of the notice of appeal, and in any event before the end of 15 working days beginning with the first working day after the day of such receipt, the respondent must supply to the relevant person—

- (a) a copy of the relevant decision made at or following the original hearing provided under regulation 43(2) or 63(2) of the Conduct Regulations or regulation 45(3) of the Performance Regulations;
- (b) any documents which were made available to the person or persons conducting the original hearing, and
- (c) a copy of any transcript requested under rule 9(3).

(4) A copy of any such transcript must at the same time be given to the appellant, unless it has been given to the appellant under rule 9(3).

(5) The appellant must supply the following documents to the relevant person in accordance with paragraph (7)—

- (a) a statement of the relevant decision and the grounds of appeal;
- (b) any supporting documents;
- (c) where the appellant is permitted to adduce witness evidence—
 - (i) a list of any proposed witnesses;
 - (ii) a witness statement from each proposed witness, and
- (d) if the appellant consents to the appeal being determined without a hearing, notice of such consent.

(6) For the purposes of paragraph (5)(c)—

- (a) an appellant is only permitted to adduce witness evidence where the appellant is relying on the ground of appeal set out in rule 4(4)(b), 5(6)(b) or 6(4)(b);
- (b) a “proposed witness” is a person—
 - (i) whom the appellant wishes to call to give evidence at the hearing;
 - (ii) whose evidence was not and could not reasonably have been considered at the original hearing, and
 - (iii) whose evidence could have materially affected the relevant decision.

(7) The appellant must supply the documents mentioned in paragraph (5) before the end of—

- (a) 20 working days beginning with the first working day after the day on which the appellant is supplied with a copy of the transcript under paragraph (4), or
- (b) where no transcript has been requested under rule 9(3), 35 working days beginning with the first working day after the day on which the appellant gave notice of the appeal to the relevant local policing body.

(8) The relevant person must give a copy of the documents supplied under paragraph (5) to the respondent as soon as practicable following receipt.

(9) Before the end of 20 working days beginning with the first working day after the day on which the respondent receives the documents under paragraph (8), the respondent must supply to the relevant person—

- (a) a statement of the respondent’s response to the appeal;
- (b) any supporting documents;
- (c) where the respondent is permitted to adduce witness evidence—
 - (i) a list of any proposed witnesses;
 - (ii) a witness statement from each proposed witness, and
- (d) if the respondent consents to the appeal being determined without a hearing, notice of such consent.

(10) For the purposes of paragraph (9)(c)—

- (a) a respondent is only permitted to adduce witness evidence where the appellant is relying on the ground of appeal set out in rule 4(4)(b), 5(6)(b) or 6(4)(b);
- (b) a “proposed witness” is a person—
 - (i) whom the respondent wishes to call to give evidence at the hearing, and
 - (ii) whose evidence is relevant to all or part of the evidence on which the appellant is relying for the purposes of rule 4(4)(b), 5(6)(b), or 6(4)(b).

(11) The respondent must at the same time as supplying to the relevant person the documents referred to in paragraph (9)(a) to (d), give the appellant a copy of the documents referred to in paragraph (9)(a), (c) and (d), together with a list of the documents (if any) supplied under paragraph (9)(b).

(12) On receipt of the documents supplied under paragraph (9), the relevant person must give to the chair a copy of the documents supplied under paragraphs (5) and (9).

Extensions of time limits

14.—(1) The appellant or the respondent may apply to the relevant person for an extension of a relevant period.

(2) Any such application must set out the period of the required extension and the reasons for the application.

(3) As soon as practicable after receipt of an application under paragraph (1), the relevant person must—

- (a) give a copy of the application to the other party (being the appellant or the respondent as the case may be), and
- (b) ask that other party whether the party consents to the application.

(4) If the other party consents to the application, the relevant period must be extended in accordance with the application and rule 13 has effect as if for that period there were substituted the extended period.

(5) If the other party does not consent to the application, the application must be referred to the chair who must determine whether the relevant period should be extended and, if so, by how long; and where the chair extends the relevant period, rule 13 has effect as if for that period there were substituted the extended period.

(6) In this rule, “relevant period” means, in relation to an application by the appellant, the period referred to in rule 13(7)(a) or (b) and, in relation to an application by the respondent, the period referred to in rule 13(3) or (9).

Review of appeal

15.—(1) Upon receipt of the documents mentioned in rule 13(5) and (9), the chair must determine whether the appeal, or one or more grounds of appeal, must be dismissed under paragraph (2).

(2) An appeal, or a ground of appeal, must be dismissed under this paragraph if the chair considers that the appeal, or ground of appeal, has no real prospect of success, unless the chair considers there is some compelling reason why the appeal, or, as the case may be, ground of appeal, should proceed.

(3) If the chair proposes to dismiss the appeal, or ground of appeal, under paragraph (2), the chair must give the appellant and the respondent notice in writing of the chair’s view together with the reasons for that view before making a determination.

(4) The appellant and the respondent may make written representations in response to the chair before the end of 10 working days beginning with the first working day after the day of receipt of that notification; and the chair must consider any such representations before making a determination.

(5) The chair must give the appellant, the respondent and the relevant person notice in writing of the determination.

(6) Where the chair determines that the appeal, or ground of appeal, must be dismissed under paragraph (2)—

- (a) the notification under paragraph (5) must include the reasons for the determination, and
- (b) the appeal, or, as the case may be, ground of appeal, must be dismissed.

Determination of an appeal

16.—(1) Where an appeal has not been dismissed under rule 15, the chair must determine whether the appeal should be dealt with at a hearing.

(2) The chair may determine that the appeal should be dealt with without a hearing, but only if the appellant has so consented.

(3) Where the appeal is to be dealt with at a hearing—

- (a) rules 17 to 26 apply, and
- (b) the chair must give the appellant and the respondent the chair’s name and contact details.

Power to request disclosure of documents

17.—(1) At any time following the provision of the documents mentioned in rule 13(5) and (9), the appellant or the respondent (the “requesting party”) may apply to the chair for disclosure of any document by the other party which is relevant to the appeal.

(2) The chair may request the disclosure of any such document by the other party and where it is disclosed, a copy must be given to the chair and to the requesting party.

(3) Where a party does not comply with a request to disclose under paragraph (2), the party must give the chair and the requesting party the reasons for non-disclosure in writing.

Notice of the hearing

18.—(1) The chair must cause the appellant and the respondent to be given written notice of the date, time and place of the hearing at least 20 working days, or such shorter period as may with the agreement of both parties be determined, before the date of the hearing.

(2) Where the appellant or the respondent (or both) have proposed witnesses under rule 13, the chair must determine which, if any, witnesses may give evidence at the hearing.

(3) No witness may give evidence at the hearing unless the chair reasonably believes that it is necessary for the witness to do so, in which case the chair must—

- (a) where the witness is a police officer, cause that person to be ordered to attend the hearing, and
- (b) in any other case, cause the witness to be given notice that their attendance is necessary and of the date, time and place of the hearing.

(4) The following paragraphs only apply to an appeal brought in accordance with rule 4 or 6.

(5) Having taken into account any representations made under paragraph (7)(c), the chair may require notice of the hearing to be published which contains information relating to one or more of—

- (a) the name of the appellant;
- (b) the date of the hearing;
- (c) the time of the hearing;
- (d) the place at which the hearing will take place;
- (e) the finding made under the Conduct Regulations or the disciplinary action, if any, imposed under the Conduct Regulations in consequence of a finding in relation to which the appeal has been brought.

(6) Where the chair requires notice to be published in accordance with paragraph (5), the relevant police force must publish the notice on its website no less than 5 working days before the day on which the hearing begins.

(7) Any person to whom this paragraph applies may make written representations to the chair in relation to—

- (a) whether, and (if so) the extent to which, the chair should exclude any person from all or any part of the hearing under rule 25(1);
- (b) whether the chair should impose any conditions under rule 25(2);
- (c) in the light of the representations made under sub-paragraphs (a) and (b)—
 - (i) whether the chair should require notice to be published under paragraph (5);
 - (ii) which types of information mentioned in paragraph (5)(a) to (e) should be included in any such notice.

(8) Paragraph (7) applies to—

- (a) the appellant;
- (b) the respondent;
- (c) the complainant;
- (d) any interested person;
- (e) any witness;
- (f) the Director General.

(9) Any written representations made in accordance with paragraph (7) must be provided no later than the date specified by the chair for provision of such representations.

Legal and other representation

19.—(1) The appellant has the right to be represented at a hearing by a relevant lawyer or a police friend.

(2) Where the appellant is represented at the hearing by a relevant lawyer, the appellant may also be accompanied at the hearing by a police friend.

(3) If an appellant chooses not to be represented, the hearing may take place and the appeal may be determined without the appellant being represented.

(4) The respondent has the right to be represented at a hearing by—

- (a) a relevant lawyer;
- (b) an officer of the relevant police force;
- (c) the chief executive of the relevant local policing body, or
- (d) another officer or employee of the relevant local policing body.

(5) Where a police friend is a police officer or a police staff member, the chief officer of police of the force of which the police friend is a member must permit the police friend to use a reasonable amount of duty time for the purposes referred to in this rule.

(6) The reference in paragraph (5) to the force of which the police friend is a member includes a reference to the force maintained for the police area for which a special constable is appointed and the force in which a police staff member is serving.

(7) Paragraph (4) does not apply where the Director General is presenting the case in accordance with rule 12(1).

Procedure and oral evidence at hearing

20.—(1) The tribunal must determine the procedure at a hearing and, insofar as it is set out in these Rules, must determine it in accordance with these Rules.

(2) The tribunal may proceed with the hearing in the absence of either party, whether represented or not, if it appears to be just and proper to do so, and may adjourn it from time to time if it appears necessary to do so.

(3) Unless the tribunal determines otherwise, the evidence adduced by the appellant must be given first.

(4) Witnesses giving evidence at the hearing may be subject to questioning and cross-questioning.

(5) Any question as to whether any evidence is admissible, or whether any question should or should not be put to a witness, must be determined by the tribunal.

(6) A verbatim record of the evidence given at the hearing must be taken; and the relevant person and, where functions have been delegated under rule 7, the relevant local policing body, must keep that record for a period of at least two years beginning with the day after the date of the end of the hearing.

Statements in lieu of oral evidence

21.—(1) Subject to this rule, the tribunal may admit as evidence a witness statement of a proposed witness supplied under rule 13(5)(c)(ii) or (9)(c)(ii), notwithstanding that the person is not to be called as a witness at the hearing.

(2) Evidence is not admissible under this rule if it would not have been admissible had it been given orally.

(3) For the purposes of this rule, a written statement purporting to be made and signed by a person and witnessed by another person must be presumed to have been made by that person unless the contrary is shown.

(4) This rule does not affect the admissibility of written evidence which would be admissible apart from the provisions of this rule.

Attendance at hearing

22.—(1) Subject to rule 25, the hearing of an appeal brought in accordance with rule 4 or 6 must be held in public.

(2) Subject to paragraph (3) and rules 23 and 24, the hearing of an appeal brought in accordance with rule 5 must be held in private.

(3) The tribunal may allow a person to attend all or part of the hearing of an appeal brought under rule 5 as an observer for the purposes of training.

Attendance of complainant and interested person at hearing

23.—(1) Subject to paragraph (6), this rule applies in relation to a hearing where the relevant decision arose from a complaint to which paragraph 19A of Schedule 3 to the 2002 Act (special procedure where investigation relates to police officer or special constable)(a) applies.

(2) The chair must cause notice of the date, time and place of the hearing to be given to the complainant or any interested person at the same time as that notice is given to the appellant and the respondent under rule 18(1).

(3) Subject to this rule and rule 25, the complainant or any interested person (or both) may attend the hearing as an observer.

(4) Subject to this rule and rule 25, the complainant or interested person may each be accompanied by one other person, and if the complainant or interested person has a special need, each by one further person to accommodate that need.

(5) The chair may put any questions to the appellant that the complainant or interested person request be put to the appellant.

(6) Paragraphs (3) and (4) do not apply to an appeal brought in accordance with rule 5 or 6.

Attendance of Director General at hearing

24.—(1) Subject to paragraphs (3) and (4), this rule applies to a specified appeal.

(2) The chair must cause notice of the date, time and place of the hearing to be given to the Director General at the same time as such notice is given to the appellant and the respondent under rule 18(1).

(3) The Director General may attend the hearing as an observer, except where an appeal is brought in accordance with rule 5 or 6.

(4) This rule does not apply if the Director General is presenting the case in accordance with rule 12(1).

Exclusion from hearing

25.—(1) On the application of the appellant or the respondent or otherwise, the chair may require any person to withdraw from all or any part of the hearing.

(2) The chair may impose such conditions as the chair sees fit relating to the attendance of a person at the hearing in order to facilitate the proper conduct of the hearing.

(a) Paragraphs 19A to 19E were inserted by paragraphs 1, 3 and 5 of Schedule 23 to the Criminal Justice and Immigration Act 2008 and paragraph 19A was substituted for paragraphs 19A to 19E by paragraphs 9 and 21 of Schedule 5 to the Policing and Crime Act 2017.

(3) Where a person is to give evidence as a witness at a hearing, the witness (and any person accompanying the witness) must not be allowed to attend the hearing before giving evidence.

(4) Before excluding any person under paragraph (1) or imposing any conditions under paragraph (2), the chair must take into account any representations made under rule 18(7)(a) or (b), as the case may be.

Statement of tribunal's determination

26.—(1) The tribunal must determine whether the ground or grounds of appeal on which the appellant relies have been made out.

(2) Where the tribunal determines that a ground of appeal under rule 4(4)(b) or (c), rule 5(6)(b) or (c) or rule 6(4)(b) or (c) has been made out, the tribunal may set aside the relevant decision and remit the matter to be decided again in accordance with the relevant provisions of the Conduct Regulations or the Performance Regulations (as the case may be).

(3) Where the tribunal remits the matter under paragraph (2) and the relevant decision was the decision of a panel (“the original panel”), the matter must be decided by a fresh panel which is constituted in accordance with the relevant provisions of the Conduct Regulations or the Performance Regulations (as the case may be) but does not contain any of the members of the original panel.

(4) The determination of the tribunal must be based on a simple majority but must not indicate whether it was taken unanimously or by a majority.

(5) The chair must prepare a written statement of the tribunal's determination of the appeal and of the reasons for the decision.

(6) Paragraph (7) applies in a case where information in relation to the appellant which is included in the police barred list has been published by the College of Policing under section 88G(2) of the Police Act 1996 (publication of information in police barred list)(a).

(7) The chair may include in the written statement any representations that the chair considers it appropriate to make in relation to the appellant and the question mentioned in regulation 11(2) of the Police Barred List and Police Advisory List Regulations 2017(b).

(8) As soon as reasonably practicable after the determination of the appeal, the chair must cause the appellant, the respondent, the relevant person and, where functions have been delegated under rule 6, the relevant local policing body to be given a copy of the written statement; but, in any event, the appellant must be given written notice of the decision of the tribunal before the end of 3 working days beginning with the first working day after the day on which the appeal is determined.

(9) Where the relevant decision arose from a complaint to which paragraph 19A of Schedule 3 to the 2002 Act (special procedure where investigation relates to police officer or special constable) applies, the relevant person must notify the complainant and any interested person of the decision of the tribunal.

(10) Where the appeal is a specified appeal, the relevant person must notify the Director General of the decision of the tribunal except where the Director General is presenting the case in accordance with rule 12(1).

(11) The chair must require the relevant police force to publish during the notification period—

- (a) subject to paragraph (15), the statement prepared in accordance with paragraph (5), and
- (b) the report of the persons conducting the misconduct hearing or accelerated misconduct hearing, but only if and to the extent that this has been published under regulation 43(7) or, as the case may be, 63(6) of the Conduct Regulations.

(12) In this rule, the notification period is the period of 10 working days beginning the day after the day on which the hearing is concluded.

(a) Section 88G was inserted by section 30 of, and Schedule 8 to, the Policing and Crime Act 2017.

(b) S.I. 2017/1135.

(13) Where the chair requires publication to take place in accordance with paragraph (11), the relevant police force must publish the information on its website for a period of no less than 28 days.

(14) Prior to publication of a statement under paragraph (11)(a), the relevant police force may redact the document—

- (a) in so far as the force considers redaction is—
 - (i) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;
 - (ii) necessary in the interests of national security;
 - (iii) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;
 - (iv) necessary for the purpose of the prevention or detection of misconduct by other police officers or police staff members or their apprehension for such matters;
 - (v) necessary and proportionate for the protection of the welfare and safety of any informant or witness;
 - (vi) otherwise in the public interest, and
- (b) in line with any restrictions imposed on the disclosure of information during the course of the proceedings.

(15) The chair may dispense with the requirement to publish the statement under paragraph (11)(a) if in the particular circumstances of the case the chair considers it is appropriate to do so on any of the grounds set out in paragraph (14)(a) or (b).

(16) In making a decision under paragraph (15), the chair may have regard to any representations—

- (a) provided under rule 18(7);
- (b) made at the hearing.

(17) Paragraphs (11) to (16) do not apply to an appeal brought in accordance with rule 5.

(18) In paragraph (3), “panel” includes a person who conducted an accelerated misconduct hearing under the Conduct Regulations.

Amendment of the Police Barred List and Police Advisory List Regulations 2017

27. In regulation 11(2) of the Police Barred List and Police Advisory List Regulations 2017(a) (review of publication: consideration by College of Policing of any matter which comes to its attention), for “22(5B) of the Police Appeals Tribunals Rules 2012” substitute “26(7) of the Police Appeals Tribunals Rules 2020”.

6th January 2020

Kit Malthouse
Minister of State
Home Office

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules set out the circumstances in which a member of a police force, a former police officer or a special constable may appeal to a police appeals tribunal. They also set out the procedures governing such an appeal.

They revoke and replace the Police Appeals Tribunals Rules 2012 (S.I. 2012/2630) (“the 2012 Rules”), the Police Appeals Tribunals (Amendment) Rules 2015 (S.I. 2015/625) and relevant

(a) S.I. 2017/1135.

provisions of the Police (Conduct, Complaints and Misconduct and Appeal Tribunal) (Amendment) Regulations 2017 (S.I. 2017/1134) subject to transitional provisions. They replace the 2012 Rules (as amended) with substantially similar provisions but with modifications to reflect changes to the handling of police complaints and police discipline matters made by the Policing and Crime Act 2017 (c. 3) (“the 2017 Act”) and the Police (Conduct) Regulations 2020 (S.I. 2020/4) (“the Conduct Regulations”).

The effect of rule 2(2) is that the Police Appeals Tribunals Rules 2008 (S.I. 2008/2863), as modified by rule 2(2) and (3) of the 2012 Rules, and the 2012 Rules (as amended) continue to apply in relation to any appeal by a member of a police force or special constable against a decision made before these Rules come into force in accordance with—

- (a) the Police (Performance) Regulations 2008 (S.I. 2008/2862),
- (b) the Police (Conduct) Regulations 2008 (S.I. 2008/2864),
- (c) the Police (Performance) Regulations 2012 (S.I.2012/2631), or
- (d) the Police (Conduct) Regulations 2012 (S.I. 2012/2632).

The following rules make new provision.

Rule 7 enables a relevant local policing body to delegate functions in relation to the administration of an appeal to another local policing body.

Rule 8 defines the “relevant person” for the purposes of paragraphs 1 and 2 of Schedule 6 to the Police Act 1996 (c. 16). Under paragraphs 1 and 2, the members of a police appeals tribunal are to be appointed by the relevant person. Paragraph 2A of Schedule 6 provides for the relevant person to have the meaning specified in Rules made by the Secretary of State.

Rule 12 provides that where under the Conduct Regulations the Director General of the Independent Office for Police Conduct presented the case to which the appeal relates at the misconduct hearing or accelerated misconduct hearing, the Director General must present the case for the respondent at the appeal.

Rule 27 makes a consequential amendment to a provision in the Police Barred List and Police Advisory List Regulations 2017 (S.I. 2017/1135) relating to the consideration of any matter which comes to the attention of the College of Policing which may be relevant to the publication of certain information in relation to a person who is included in the police barred list under those Regulations.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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